
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THOMAS BROWN, for C.B., a minor,

Plaintiff,

v.

CANYONS SCHOOL DISTRICT, a Utah
governmental entity; JOHN CARRELL,
an individual; and JOHN DOES I-V,

Defendants.

**MEMORANDUM DECISION AND
ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:16-cv-00270-DN-PMW

District Judge David Nuffer
Magistrate Judge Paul M. Warner

The Report and Recommendation¹ issued by United States Magistrate Judge Paul M. Warner on September 7, 2017 recommends denial of Defendant John Carrell's Motion to Dismiss² and Plaintiff's Motion for Partial Summary Judgment.³

De novo review has been completed of those portions of the report, proposed findings and recommendations to which objection was made, including the record that was before the Magistrate Judge and the reasoning set forth in the Report and Recommendation.⁴

Mr. Carrell objects⁵ to the recommendation to deny his Motion to Dismiss. His motion sought dismissal as sanction under rules 37(b)(2)(A) and 41(b) of the Federal Rules of Civil Procedure due to Plaintiff's alleged failure to provide initial disclosures and prosecute the case in

¹ Report and Recommendation, [docket no. 38](#), filed September 7, 2017.

² Defendant John Carrell's Notice of Motion and Motion to Dismiss Plaintiff's Action; Memorandum of Points and Authorities in Support Thereof; And Declaration in Support Thereof, [docket no. 29](#), filed November 9, 2016.

³ Plaintiff's Motion for Partial Summary Judgment, [docket no. 30](#), filed November 11, 2016.

⁴ 28 U.S.C. § 636(b).

⁵ Objection to Report and Recommendation and Motion to Reconsider ("Objection"), [docket no. 42](#), filed September 22, 2017

a timely fashion.⁶ In the Report and Recommendation, Judge Warner considered this request using five factors specified by the 10th Circuit in *LaFleur v. Teen Help*.⁷ According to the 10th Circuit:

Dismissal is a severe sanction; therefore, it should be imposed only if a lesser sanction would not serve the ends of justice. The district court should consider the following factors when considering whether dismissal is an appropriate sanction: (1) the degree of actual prejudice to the opposing party, (2) the degree of interference with the judicial process, (3) the litigant's culpability, (4) whether the litigant was warned in advance that dismissal was a likely sanction, and (5) whether a lesser sanction would be effective.⁸

Instead of offering distinguishing legal precedent as support for substantive objections, Mr. Carrell “respectfully disagree[s]”⁹ with Judge Warner’s recommendation, providing variations on the same information he included in the original Motion to Dismiss. This information was thoroughly considered by Judge Warner through the application of the aforementioned *LaFleur* factors.

The analysis and conclusion of the Magistrate Judge are correct. Therefore, the analysis and conclusion of the Magistrate Judge are accepted and the Report and Recommendation¹⁰ is adopted.

⁶ Report and Recommendation at 4.

⁷ *Id.*

⁸ *LaFleur v. Teen Help*, 342 F.3d 1145, 1151 (10th Cir. 2003) (quotations and citations omitted).

⁹ See Objection at ¶4, 7, and 12.

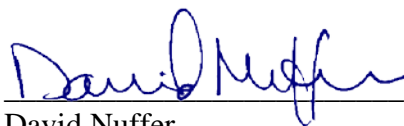
¹⁰ Report and Recommendation, [docket no. 38](#), filed September 7, 2017.

ORDER

IT IS HEREBY ORDERED that the Report and Recommendation¹¹ is ADOPTED, and Defendant's Motion to Dismiss¹² is DENIED and Plaintiff's Motion for Partial Summary Judgment¹³ is DENIED.

Signed September 22, 2017.

BY THE COURT



David Nuffer
United States District Judge

¹¹ Report and Recommendation, [docket no. 38](#), filed September 7, 2017.

¹² Defendant John Carrell's Notice of Motion and Motion to Dismiss Plaintiff's Action; Memorandum of Points and Authorities in Support Thereof; And Declaration in Support Thereof, [docket no. 29](#), filed November 9, 2016.

¹³ Plaintiff's Motion for Partial Summary Judgment, [docket no. 30](#), filed November 11, 2016.